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DURBIN *v.* ROANOKE BLDG. CO. et al.

Jan. 16, 1908.

[60 S. E. 86.]

1. Boundaries—Description—Highways.—Where a deed describes a lot as extending to a street, thereby conveying title to the center of the street, subject to an easement of the right of way, a subsequent deed, by the grantee in the earlier deed, conveying the same lot by courses and bounds, but not calling for the street line as a boundary, will be held to also convey title to the center of the street.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 8, Boundaries, §§ 123-130.]

2. Same—Evidence—Presumptions.—While the lot owner and his alienee were allowed to keep possession many years and improve land in front of the lot included in what was formerly designated as a street, the presumption is, as against a judgment creditor of a former owner, that such owner intended to convey the fee to the middle of the former street.

BLACKWOOD COAL & COKE CO. *v.* JAMES.

Jan. 16, 1908.

[60 S. E. 90.]

1. Master and Servant—Injury to Servant—Sufficiency of Declaration.—In an action against a mineowner for the death of plaintiff's decedent, who was killed while employed as a driver in a coal mine, a declaration held on demurrer to be sufficiently full and certain to be understood by defendant and the jury and to enable the court to say if the facts stated were proved whether plaintiff could recover.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 34, Master and Servant, §§ 816-836.]

2. Evidence—Opinion Evidence—Disposition of Animal.—In an action for the death of plaintiff's decedent, who was employed as a driver in a mine, a question as to the general character and condition of the mule driven by decedent, whether it was wild, safe, or dangerous, or what its habits were, did not call for the witness' opinion, but for a statement of facts based upon his knowledge.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 20, Evidence, §§ 2149-2185.]

3. Exceptions, Bill of—Authority to Make.—Evidence is not a part of the record, unless made so by a proper bill of exception the making of which is a judicial act, and the trial judge, who must indicate his approval of the correctness of the evidence incorporated therein by authentication under his own hand, cannot delegate that act to the clerk, and hence a paper purporting to contain the evidence in a case,

certified by the clerk to be a true transcript of the record but containing nothing to identify its contents as the evidence adduced on the trial, and no indorsement or other earmark of the judge to indicate that he had seen it or approved it as a true transcript of the evidence, cannot be made a part of the record.

4. Appeal—Writ of Error—Questions Presented for Review—Necessity for Setting Forth Evidence.—Whether the trial court committed prejudicial error in calling a witness in a civil case of its own motion cannot be considered, where the evidence given by the witness is not before the court.

SCOTT *v.* CHICHESTER, Sergeant.

Jan. 23, 1908.

[60 S. E. 95.]

Criminal Law—Punishment—Term of Imprisonment—Inclusion of Time of Parole.—Where a prisoner who had been paroled on good behavior thereafter defaulted and was remanded to jail, he was entitled to be discharged on expiration of the period of his sentence, counting the time during which he was on parole, and he could not be held for the period of his sentence, not counting the time while on parole.

[Ed. Note.—For cases in point, see Cent. Dig., vol. 15, Criminal Law, § 3313.]

NORFOLK & W. RY. CO. *v.* DUKE & RUDACILLE.

Jan. 23, 1908.

[60 S. E. 96.]

1. Appeal and Error—Judgment—Conclusiveness.—A judgment of the Supreme Court of Appeals remanding a cause for new trial necessarily determined that the circuit court had jurisdiction, and concludes the raising of such question subsequently, since a decision of the Supreme Court of Appeals settles the question of jurisdiction, and that and all other matters determined becomes *res judicata* with the finality of such judgment or decree, where the question raised upon second appeal or writ of error was necessarily involved on the former appeal or writ of error, whether actually adjudicated or not.

2. Same.—A decision of the Supreme Court of Appeals on a former writ of error, approving an instruction in effect construing a contract to be severable, concludes an objection on a subsequent trial to the refusal of an instruction that the contract was entire.

3. Same.—A decision of the Supreme Court of Appeals on a former writ of error, approving an instruction that in determining what constituted a reasonable time for the delivery of railroad ties